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Q. If Mr. Lorenzo said that he thought medium was insignificant would that affect your conclusions in this case?

MR. HALL: Objection.

A. It might. I don't know why you'd use a term medium if it's insignificant. Medium doesn't imply insignificant to a reader.

Q. But what Mr. Lorenzo, the author of the e-mail, said may be insignificant in terms of what -- interpreting that word?

MR. HALL: Objection.

Q. But you don't remember what he said about it.

A. I don't.

Q. All right. Sorry. So you would know that there were layoffs and what else would you know from this e-mail. Would you know where those layoffs were taking place?

A. My assumption is it was at AOL but not Time-Warner corporate.

Q. But I'm saying what from the e-mail would allow you to reach that assumption?

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MR. HALL: Objection.

A. I don't know. I don't know. I don't remember how I drew that conclusion.

Q. Okay. But is it possible from these e-mails that one can conclude that these layoffs were negative for the company?

MR. HALL: Objection.

A. Possibly, yes.

Q. Is it possible to conclude that these layoffs were positive?

MR. HALL: Objection.

A. It's unlikely they're positive unless they were cost savings or synergy related.

Q. And what makes you think that they weren't cost saving or synergy related based on these e-mails?

A. Because of the way that they're written. Because the suggestion in this time period is that the layoffs were because of a slowing of demand.

Q. Where does that come from?

MR. HALL: Objection.

A. Other information that -- in other

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e-mails.

Q. From who?

A. And just general market information. I mean the synergy cost savings that we're talking about from merging the two companies, those were already in the works before the merger had been completed. And most of those had already been pretty much absorbed by March.

Q. So you would assume if you saw this e-mail at this time that the layoffs would be negative?

A. Yeah. And I think the market assumed it as well.

Q. How long would it take a company like AOL to extract the synergies from a merger?

MR. HALL: Objection.

A. Well, to really extract and realize merger synergies can take up to a year. But in terms of the layoffs and the planned layoffs usually if a merger has been in the works for one year you may know exactly how much you're going to do within a month or

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even before the merger closes.

Q. How many employees did AOL have?

MR. HALL: Objection.

A. Oh, tens of thousands.

Q. 90,000? Does that sound about right?

A. Possibly.

Q. So it may take some time to work through all the synergies with a 90,000 employees work force.

MR. HALL: Objection.

A. It might. It might. Retrospectively these were not synergistic layoffs or cost-saving layoffs.

Q. That's not what I'm asking, though. I'm asking what you would learn from the e-mails.

MR. HALL: Objection.

Q. I mean, you're telling me that Kiggens should have disclosed these and I'm trying to probe as to what it is he would have said about them.

A. No, I'm saying that that's alleged in the compliant that this was material affair

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information. I don't think there's any question that layoffs of medium severity in a company is material information. It's listed in certain -- in the Federal Register as material information. In one of the sources that I site in my report.

Q. Okay. No, I'm just wondering what --

A. So it's something that you would want to know. Whether it's positive or negative depends on what spin you put on it.

Q. Okay. So now that we've decided -- we got through what you think these say, so what should Mr. Kiggen have disclosed?

MR. HALL: Objection.

A. That he is aware that there are layoffs and planned layoffs at AOL.

Q. That he's aware of or that his source is telling him?

MR. HALL: Objection.

A. Could be that they have sources telling them. Depends how solid the information is.

Q. Okay. Well -- all right. What

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else?

A. This may be indication of weakness in the operations of AOL.

Q. And on what basis would they make that conclusion?

MR. HALL: Objection.

A. The fact that they're laying off people.

Q. But he has no idea how many people, right?

MR. HALL: Objection.

A. Well, I mean, you're assuming that this is the sum and substance of what he knows and that he didn't make any effort to investigate from Anthony Lorenzo what the meaning of his contact was.

Q. Do you know who his con -- Lorenzo's contact was?

A. No.

Q. Did you read Sarah Bernard's transcript?

A. Oh, well, I may have but I don't remember. I didn't prepare for this deposition.

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Q. Do you know who Mr. Lorenzo -- do you know the title of Mr. Lorenzo's source at AOL? Do you know whether ---

A. No.

MR. HALL: Objection.

Q. Okay. Suppose Mr. Lorenzo's source was a 25-year-old junior employee at AOL.

MR. HALL: Objection.

A. So --

Q. Would that change the nature of whether or not the information should be disclosed?

MR. HALL: Objection.

A. Not necessarily.

Q. Okay.

A. It may be the best source.

Q. Because someone like that may know non-public information about the company?

MR. HALL: Objection.

A. Sure.

Q. You believe that these layoffs that are referred to in this e-mail are layoffs that were leaked in a Wall Street

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Journal article on August 13th; is that right?

MR. HALL: Objection.

A. That's my assumption.

Q. Okay. And did you do anything to test that assumption?

A. Other than speaking with counsel, no.

Q. And you're aware that on July 11th there was a Washington Post article announcing layoffs at AOL; is that right?

A. Yes.

Q. Okay.

A. It's in my event study, in fact, I think. And it had a negative effective on the stock price I believe.

Q. Did it have a negative effect on the stock price according to your report in your class certification?

A. I don't know if I picked it up then. I probably didn't pick it up until later.

Q. Okay.

A. I remember doing -- after I did class cert I remember going through LexisNexis

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and finding additional information and news and I remember that was an event I added later on.

MR. GESSER: Let's mark this Hakala 7.

(Hakala Exhibit 7, Washington Post article dated July 11, 2001, marked for identification as of this date.)

BY MR. GESSER:

Q. If you look at Hakala 5 it says, "I have a source at AOL and apparently the company had some layoffs today."

Do you see that?

A. Yeah.

Q. And that day is what?

A. July 10th.

Q. Okay. And then if you look at Hakala 7, it's the Washington Post article, it said, "Yesterday AOL Time-Warner laid off about 30 people in it's on-line marketing division."

A. Yes.

Q. So yesterday would be July 10th, 2001; is that right?

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A. Yes.

Q. Okay. So -- and you don't know who Mr. Lorenzo's source was, is that right?

A. That's correct.

Q. Okay. So what makes you think that these layoffs that are announced here on this July 11th Washington Post article are not the layoffs referred to in Mr. Lorenzo's e-mail from July 10th?

MR. HALL: Objection.

A. All I know is discussions from counsel about other information that they had. However --

Q. That who had?

A. That counsel had.

I don't know for sure one way or the other whether this was. In fact, this was a discussion I had with counsel of how do I know that this isn't the layoffs that's talked about.

Q. And let me -- what's your best guess?

MR. HALL: Objection.

A. I don't have one.

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Q. You don't have a view?

A. I don't have a view.

Q. But your report estimates damages and makes a series of assumptions that these layoffs were not disclosed until August 13th. And so I'm asking you why do you say that, why do you think that these layoffs weren't disclosed on July 11th?

MR. HALL: Objection.

A. Because of conversations with counsel and what's alleged in the compliant.

Q. But this is your report. You can't claim privilege. What is the basis for your assumption that the August 13th is the first disclosure of these layoffs?

MR. HALL: Objection.

A. I'm not claiming privilege. I'm saying -- I'm saying I'm not a finder of fact and I had a discussion with counsel about what counsel's basis was --

Q. So tell me about that discussion. What did counsel tell you that made you think that the August 13th was the disclosure?

MR. HALL: Objection.

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A. We had a discussion about what their understanding was of what was known and when it was known and what it was.

Q. Okay. And --

A. And the 30 layoffs was not the full extent of what was disclosed and what was available. My sense was if that's the assumption, here's the damages. If that's not, then those damages wouldn't exist.

Q. In your report do you indicate there's any doubt or uncertainty as to when those layoffs were disclosed?

MR. HALL: Objection.

A. Under the assumptions of the plaintiffs, no. But I don't say one way or the other whether I make any conclusion on this issue.

Q. You don't?

A. No.

Q. Okay. So let me see if I understand what you're now saying. You're now saying that you have no view one way or the other as to whether the layoffs were disclosed on July 11th or August 13th; you were -- just

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assumed that to be the case and if that was the case you provided a damage analysis.

MR. HALL: Objection.

A. That's generally correct. However, I made some investigation with counsel to satisfy myself that they believed that they could establish that these layoffs were not the sum and substance of the total amount of information disclosed.

Q. Okay. And what is then that information that would suggest to you that there is any possibility that these layoffs are the layoffs that were actually disclosed on August 13th?

MR. HALL: Objection.

A. I don't know. I don't remember the conversation other than --

Q. You don't remember the conversation?

A. Other than what assumptions should I assume for purposes of calculating damages.

Q. Okay. And what's that assumption?

A. The assumption was that layoffs were going to be made in AOL of medium

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severity and that that was beyond just merely 30 workers. And that the extent of that was partially revealed later on.

Q. Okay. And so it's the fact that it's a medium -- it's medium severity sounds more than 30, that's it?

MR. HALL: Objection.

A. Sounds like more than 30 and there were other discussions I had with counsel and I don't remember all the facts they laid out for me.

Q. Okay. Did they lay out the fact that the source at AOL was a fairly junior employee?

MR. HALL: Objection.

A. I don't remember that.

Q. Did they lay out the fact for you that she was in the division in which the layoffs were announced on July 11th?

A. I don't.

MR. HALL: I don't know.

A. I don't remember that.

Q. Okay. So let me see if I understand. So you think it's plausible that

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the August 13th layoffs are the layoffs that are referred to in Mr. Lorenzo's e-mail; is that right?

A. No. I have no doubt that the layoffs on July 11th represent part of what's in the e-mail. That's not what I'm saying. I'm not saying that these are not part of the layoffs.

What I'm saying is that there was more information that AOL was planning for layoffs than just this 30.

Q. Okay. And how --

A. And that the layoffs were going to be of medium severity.

Q. And how was Mr. Kiggen supposed to realize that?

MR. HALL: Objection.

A. I don't know. Again, you're trying to try liability and facts with an damages expert who's been asked to estimate damages based on the assumptions in the complaint.

Q. I'm trying --

A. And you're trying to force me to

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do something that you know full well I'm not required to do and I'm not supposed to do.

Q. I am testing the assumptions on which your damage analysis was based. And one of your key assumptions is that information that was known to Mr. Kiggen on July 11th was not disclosed and was subsequently disclosed on August 13th.

A. Right.

Q. And I'm testing that assumption because I think that assumption is completely without any merit.

MR. HALL: Objection.

A. Then argue that in summary judgment with counsel over here. Not with me.

Q. No, but you present that assumption as a factual determination that you've made. If that's not the case then that's fine.

A. Why do I say that's a factual determination I made?

Q. You say that's a conservative assumption in your report. But let me --

A. A conservative assumption based on

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the assumption that I set forth in my report.

Q. Okay. I'm just asking you is it reasonable to assume that a low level AOL employee would know about thousands of layoffs a month before they occurred and that she would be able -- that that information would not get leaked?

MR. HALL: Objection. And, Avi, I've been very polite here and I'm not going to talk too long because I don't want to do that but you keep going over this point. I think it's very clear that that is an argument that you will get to make to a jury. We'll argue about that. And from the way Mr. Hakala -- Dr. Hakala has done his report, if you're successful in proving to a jury that that's the case, then the damages associated with that may be affected. But for Dr. Hakala to determine that as a finding of fact is inappropriate. I think he lays out very clearly what his assumptions are as do all the experts in this case including

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Dr. Stoltz.

MR. GESSER: Dr. Stoltz indicates when he's been instructed by counsel to make assumptions. Dr. Hakala makes assumptions that are -- that he at least represents in his report are based on his own independent assessment of the facts. And I'm testing to see whether -- because if those assumptions are not valid -- Donny, let me finish -- if those assumptions aren't valid then his report isn't valid and then when we move to strike him that'll be relevant. Okay? So --

MR. HALL: But I think Dr. Hakala has also testified -- and you don't need to raise your voice -- I think Dr. Hakala has also testified in this deposition that his assumptions are based on instruction of counsel and based on what's in the compliant assuming plaintiffs are able to prove their case.

MR. GESSER: Well, that's a new

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revelation that I just got in the last half hour and it's very helpful to me and I will act accordingly but I need to test that for each of the assumptions that he's made.

A. With all due respect, paragraph 5 at the preface makes it very clear that this is from counsel. And it's an assumption, not a conclusion.

MR. HALL: Right.

A. And the fact that I cite from the complaint for those assumptions should also have clued you in that that's where I got it from.

Q. Okay. I just want to test a couple of these assumptions just so I get a sense of whether or not you -- because the last time we went over this, if you recall at class certification, you were very certain that the August 13th report were related to these layoffs. The layoffs that were announced on August 13th were the same layoffs that Mr. Lorenzo is referring to. That's -- we had this exchange about a year ago and now

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I'm hearing a sort of a different story so that's why I want to get to the bottom of this.

MR. HALL: Objection.

A. That's fine. If you want to establish whether I'm going to testify to a fact of that nature I'm perfectly happy to tell you I'm not.

Q. Okay. And I want to go beyond that and I want to test whether you think that assumption is reasonable or not. That's where I'm at now. Do you understand? And if you want to tell me that assumption may not reasonable, I just don't know, then you can just say that and then we'll move on.

MR. HALL: Objection.

A. I think I've already said I don't know one way or the other.

Q. You don't know one way or the other whether that's a reasonable assumption or not.

A. I don't know -- it's a reasonable assumption given what counsel indicated to me but I don't know one way or the other whether

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assumption is true or not and I didn't make that determination. And I've made that clear.

Q. Okay. So let's just go through it. That's a reasonable assumption based on what you were told by counsel. It's a reasonable assumption because you think that medium severity means more than 30 and what else?

MR. HALL: Objection.

A. That it would not be announced publicly by AOL.

Q. Okay. Which it wasn't. Then the report the next day from the Washington -- in the Washington Post is an announcement by AOL. It looks like a leak of some kind, right?

A. Yes.

Q. All right.

A. Or the people being laid off basically telling the Washington Post. It may not even be a leak at that point.

Q. Okay. What else?

MR. HALL: Objection.

A. That's all I know.

Q. That's all you know.

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Okay. Now, the August 13th announcement, those are layoffs that are being announced for the future, right? Not a layoff that actually happened?

A. Yes.

Q. Correct. And those layoffs, do you know where they took place?

MR. HALL: Objection.

A. Generally in AOL.

Q. But where physically?

A. I don't know.

Q. Okay. If I represent --

A. I think some of them were in Washington. Some of them were in other places.

Q. Do you know where Anthony Lorenzo's source was physically located?

MR. HALL: Objection.

A. No.

Q. She was in New York.

A. Okay.

Q. Is it reasonable for a junior employee at AOL in New York to know about layoffs occurring in other areas and other

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divisions a month before they occurred?

MR. HALL: Objection.

Q. Does that seem plausible to you?

MR. HALL: Objection.

A. It's entirely possible that somebody in any division would know that there's going to be layoffs system-wide and that they're actively looking at system-wide layoffs.

Q. A junior employee?

A. Oh, yeah. I mean, in any corporation you would.

Q. That would be kept non-public for more than a month?

MR. HALL: Objection.

A. In some cases, yeah.

Q. Do you know if that is consistent with Mrs. -- with Ms. Bernard's testimony in this case?

A. I don't know.

Q. All right.

Again, you indicated that you have some experience with analysts -- analysts and their duties. If Mr. --

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A. Not just some.

Q. A lot.

A. Yeah.

Q. Okay. So if Mr. Kiggen gets these e-mails and the next day he sees this Wall Street Journal article that announces the layoffs, any reason for him not to assume that these are the same layoffs?

MR. HALL: Objection.

A. I don't know one way or the other.

Q. You don't know whether it would be reasonable for him to assume that's the same layoffs?

MR. HALL: Objection.

A. It's plausible but it wasn't my basis to -- I didn't look into that. But it's plausible it might be but it might not be. I just don't know.

Q. Okay. Well, why might it not be?

A. There may be more information behind these e-mails.

Q. More information that who had?

A. That Kiggens had, that Lorenzo had that AOL was in the process of looking at and

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planning greater layoffs going forward.

Q. But you haven't seen any evidence of that.

A. No.

Q. Not in any of the deposition transcripts, not in any of the other e-mails?

A. (Witness nods.)

Q. So assuming that this is all that Mr. Kiggen saw, he saw these e-mails and the Washington Post article, reasonable for him to assume that the layoffs were the layoffs announced in the Washington Post article?

MR. HALL: Objection.

A. Might be.

Q. Might be.

A. Yeah, might be.

Q. Okay. Let's look at the second part of that e-mail which is Hakala 6. It says, "In addition, I wasn't aware that AOL was under investigation and had suspended some employees for inappropriate accounting activities."

In your report you assume that this was material non-public information that

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Kiggen acquired through this e-mail; is that correct?

A. Yes.

Q. And that this information remained non-public until July of 2002; is that right?

A. Yes.

Q. And that the damages that were attributable to Credit Suisse are the damages that result from the disclosure of accounting irregularities at AOL in July of 2002; is that correct?

A. Partial. Yeah.

Q. Partial.

A. Only partial of the damages associated with that. I didn't assume all.

Q. Okay. What percentage did you assume?

A. About 14.2 percent.

Q. Why did you assume 14.2 percent?

A. I looked at the minimum effect of net disclosure of the nonaccounting issues based on the net effect of the two-day report in the Washington Post as a third-party disclosure of this issue. And then prorated

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it across the three disclosures. Washington Post first disclosed these unconventional transactions in a series of two exposes and then the company finally acknowledged that they were under investigation on the evening of the 2004 of July.

Q. They were under investigation by the Securities & Exchange Commission?

A. I believe so, yes.

Q. Do you have any idea whether the investigation occurred -- when that investigation started?

MR. HALL: Objection.

A. I believe it started in -- sometime in the spring of 2001 at the earliest in connection with the Purchase Pro and some other things.

Q. Okay.

A. I think we know that from some of the Purchase Pro issues and from I think the Justice Department Fair Funds issues that have come out.

Q. Okay.

A. I remember I did the Plan of

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Allocation for the Justice Department and they wanted me to assume damages beginning sometime in that time period. Or it was before that.

Q. So we're going to go through the same thing and if your answer is that you did nothing to test this and you just assumed it to be true, then maybe you should just say it at the outset. But what was your basis for assuming that this information was not public at the time?

MR. HALL: Objection.

A. I did a lot of research on whether it was public both previously and otherwise. And while there was knowledge of an investigation of Purchase Pro and maybe AOL's role with Purchase Pro there was no knowledge that AOL itself was under investigation that I was aware of. Certainly not of this magnitude nor that AOL had actually let go employees and been involved in inflating revenue. I wasn't aware of any information about that until July of '02 and I think in fact the defendants in the AOL Time-Warner made that argument.

Q. Okay. Now, so that leads you to

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conclude that this source of Mr. Lorenzo had material non-public information about an investigation of AOL; is that right?

A. Yes.

Q. Okay. Have you -- again, you haven't read Ms. Bernard's transcript?

A. If I have I don't remember doing it.

Q. Okay. And anything about Ms. Bernard would lead you to believe that she was in a position to know material non-public information about an investigation of AOL?

MR. HALL: Objection.

A. I don't know one way or the other.

Q. Why isn't that something that you looked at?

MR. HALL: Objection.

A. I was worried about estimating damages based on what was pled in the complaint.

Q. So then why did you bother looking at the Purchase Pro information?

MR. HALL: Objection.

A. I wanted to understand information

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about when the market knew and what the market knew about potential accounting improprieties by AOL. My knowledge of that really predates this case. It has to do with work that I was doing in AOL Time-Warner Securities Litigation and then subsequent work I was doing in assisting in preparing the Plan of Allocation as a tag-along to the distribution of the funds in the AOL Time-Warner Securities Litigation.

Q. So when you were deposed in our -- in class certification you were aware of the Purchase Pro investigation and that it was publicly disclosed before July 11th, 2001?

MR. HALL: Objection.

A. Not AOL's role. Only Purchase Pro.

Q. Okay.

A. No one made the connection to AOL that I remember in that time period. Or if they did they didn't make the connection that AOL itself was engaged in anything.

Q. Mr. Lorenzo says, "I wasn't aware that AOL was under investigation."

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A. Yes.

Q. Does that suggest that Mr. Kiggen was aware of that?

MR. HALL: Objection.

A. I don't know.

MR. GESSER: We're marking Hakala Exhibit 8.

(Hakala Exhibit 8, Washington Post article dated June 19, 2001, marked for identification as of this date.)

BY MR. GESSER:

Q. So let's go through this one at a time. Suspended some employees. Okay?

A. Yes.

Q. It says, "An America Online executive has been placed on administrative leave."

Is that the same as being suspended?

MR. HALL: Objection.

A. I guess.

Q. It says, "At least one other low-level employee was put on administrative leave."

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MR. HALL: Objection.

A. Okay.

Q. Is that right?

A. Okay.

Q. So for that part of the e-mail that AOL -- that employees had been suspended is that consistent with information that was already in the market?

MR. HALL: Objection.

A. With regard to the Purchase Pro they're assisting or aiding and abetting in Purchase Pro, yes. But I believe that any knowledge that there had been any impropriety in AOL, that was not known.

Q. I'm sorry. These were AOL employees, correct?

A. Right.

Q. And these are AOL employees who were placed on administrative leave, right?

A. Right.

Q. Okay.

A. But not for their actions in AOL.

Q. Are they Purchase Pro employees?

A. No.

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Q. Okay. So it's in their capacity as AOL employees that they're being put on suspension, right?

MR. HALL: Objection.

A. Right.

Q. And it talks about an investigation; is that right?

A. Yes.

Q. And is the investigation relating to accounting activities?

MR. HALL: Objection.

A. At Purchase Pro. I don't believe it is at AOL at all. It says probe is focused on accounting issues related to Purchase Pro and then it says all rev --

Q. Related to Purchase Pro.

A. It says all revenues related to Purchase Pro have been accounted for appropriately and accurately by AOL.

Q. Okay. So you view these as being different. Is that what you're saying?

MR. HALL: Objection.

A. My understanding is that this relates to two employees being implicated in

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possibly aiding and abetting in some accounting issues at Purchase Pro where Purchase Pro was under investigation.

But at this point AOL and others had specifically said AOL was not under investigation and AOL -- there was no indication that AOL had done anything improper. That was my understanding. Not just from this but from other documents.

Q. But you're telling me that this -- you view this June 19th e-mail as being that AOL was not under investigation, that Purchase Pro was under investigation; it's just that AOL employees were under investigation?

MR. HALL: Objection.

A. AOL employees were implicated in the investigation of Purchase Pro but my understanding was that there was no public knowledge that AOL itself was under investigation. That only came out a year later. As far as I remember.

Q. Here it says, "As a policy we don't comment on employee matters."

That's the AOL statement, right?

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A. Yes.

Q. So what do you think that a disclosure would look like if Mr. Kiggen decided -- you believe that Mr. Kiggen should have disclosed this information; is that right?

MR. HALL: Objection.

A. Yeah. In some form.

Q. Okay. And what if Mr. Kiggen had looked at this June 19th Washington Post article and had said, Well, that looks like this is already public? Would that be a reasonable conclusion for him to make?

MR. HALL: Objection.

A. I don't know. Not if it implies only Purchase Pro was under investigation and there was no impropriety at AOL and that AOL was not under investigation, no. But otherwise, it might be.

Q. But that's an interpretive issue is what you're telling me; is that right?

A. That's an issue for the jury and the judge. That's not my issue.

Q. Okay. So assuming that Mr. Kiggen

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came to the view that, oh, this sounds pretty similar, it may not be the exact same thing that I'm getting from this e-mail and assuming Mr. Kiggen made inquiries at AOL, couldn't get anymore information, what should he have disclosed in this report?

MR. HALL: Objection.

A. I haven't thought about that. Other than, you know, what I assumed based on the complaint. I don't know. I'd have to think about that some more. Probably at a minimum that AOL was involved in -- apparently was involved in some activities with Purchase Pro and that this may have some implications for AOL.

Q. How would he reach that conclusion?

MR. HALL: Objection.

A. Two employees were placed on administrative leave.

Q. But there's no indication that it's related to Purchase Pro, is there?

MR. HALL: Objection.

A. Yeah.

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Q. Where's that?

A. It's in this Washington Post article.

Q. Oh. But now you're saying that it would be reasonable for Kiggen to link these two things together?

MR. HALL: Objection.

A. No. That was your hypothetical. That was your hypothetical that linked those two together. If I'm on June 11th --

Q. Right.

A. -- I don't -- unless there's more behind this that this is Purchase Pro, I don't think he has that. I think what he has knowledge of is that AOL is under investigation. Because it doesn't say Purchase Pro was under investigation. AOL was under investigation. And suspended some employees for inappropriate accounting activities. Some deals book inappropriate inflated revenue.

Q. So he should just put that in the report.

MR. HALL: Objection.

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A. That he aware of or there are rumors that AOL is under investigation or he has a credible source or a source that indicates such, sure.

Q. And assuming his source is a 25-year-old woman who's a junior employee at AOL, should he have disclosed that as well?

MR. HALL: Objection.

A. I don't know if I would have disclosed that. I would just disclose that he has a source. He might determine the voracity of the source. He might do some additional verification. But he certainly is in knowledge now that AOL is under investigation and suspended some employees. That's not public information.

Q. Well, the suspension -- well, let's say that he has read -- again, he's read the June 19th article and he assumes that they're the same. The suspending employees seems to be public; is that right?

MR. HALL: Objection.

A. Well, it becomes public or at least it leaks out with the Washington Post

S. HAKALA

article at least with regard to two employees. We don't know that that's the full extent of it.

Q. Right. Before -- okay. So what would the market do with that information?

MR. HALL: Objection.

A. Well, if it only implicates Purchase Pro and it doesn't implicate AOL probably nothing.

Q. Suppose he were to write I have a source at AOL who tells me that AOL is under investigation, has suspended some employees for inappropriate accounting activity, some deals booked inappropriately inflated revenue, also some employees have been accused of trading irregularities, namely shorting partner stocks. Essentially cuts and pastes the e-mail into his report and says he has a source at AOL who says that.

A. Okay.

Q. Under your analysis would that be a complete disclosure?

MR. HALL: Objection.

A. It might be. And that certainly

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would have impacted the stock price.

Q. That would have impacted the stock price?

A. Oh, sure.

Q. Without there being any indication of the magnitude of the investigation, how many employees were involved, just that? That would have impacted the stock price?

MR. HALL: Objection.

A. Sure.

Q. What makes you say that?

A. Because in similar kinds of discussions later times impacted the stock price.

Q. For example, July 18th, 2002?

A. The 18th Purchase Pro -- yeah. The Washington Post article was actually very narrow in terms of its implications.

Q. And close to close, did that have an impact on the stock price?

MR. HALL: Objection.

A. Close to close it had an impact but the impact was muted by the company's denials. But close to open had a huge impact

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and the company in a sense committed fraud in denying it. But if you isolate the event itself it has a very significant impact.

(Hakala Exhibit 9, Washington Post website article entitled Unconventional Transactions Boosted Sales, marked for identification as of this date.)

BY MR. GESSER:

Q. You view this e-mail here, the -- Hakala 6 and the information that is Mr. Lorenzo's conveying to Mr. Kiggen there as being equivalent to the information that was disclosed a year later by the Washington Post; is that correct?

MR. HALL: Objection.

A. Not quite.

Q. Not quite?

A. No. The impact of this was much greater than the impact I assumed would have occurred if this had been disclosed.

Q. The impact of what?

A. This first article.

Q. And what is that?

A. There's a lot of possible reasons.

S. HAKALA

Q. Why don't you give me some.

A. It was fairly detailed. There was a lot to it. However, on the other hand, the magnitude of what's being discussed here really was very small as I think the company pointed out. So my view is this is a third-party disclosure that AOL's got some accounting concerns. I thought it was the most equivalent disclosure of what would occur but I gave it a lower weight. In fact, I gave it the net weight rather than the gross effect that the article had before the company denial.

Q. And how did you do that?

A. Took the net effect of the drop on July 18th and July 19th of 2002 and applied it backwards. And assumed that would have been the effect had there been some disclosure that AOL was under investigation.

The other thing is that this doesn't reveal that AOL's under investigation. AOL doesn't actually acknowledge it's under investigation for its accounting until the evening of the 24th of July.

S. HAKALA

Q. And in doing so it indicates that the SEC began its investigation following the July 18th report; is that correct?

MR. HALL: Objection.

A. That's what's suggested in the July 24th statement. Now we now know subsequently that's not really true.

Q. Who's we now?

A. I know from the SEC that they were actually looking at AOL with regard to Purchase Pro and some of the other trading.

Q. Is that public anywhere?

A. It's part of the Fair Funds disclosure. So when they finally settled with AOL, yeah.

Q. But you haven't looked at Ms. Bernard's deposition testimony to know whether she knew that or not.

MR. HALL: Objection.

A. No, I didn't.

Q. Are there factual disclosures that are made in this July 18th report that are in addition to the July 11th e-mail from a year earlier?

S. HAKALA

A. Yes.

MR. HALL: Objection.

Q. Can you think of some of those?

A. Well, I mean, we can look at the article and compare them but certainly the article is a long expose along with certain denials by the company as well.

Q. And does it make a difference whether, referring to the market, what the source of the information is?

MR. HALL: Objection.

A. It could.

Q. Does it make a difference of what the timing of the information is? I mean, whether the information was disclosed in July of 2001 or in July of 2002, would that -- could that have any effect on what impact it would have on the stock price?

A. It might. It might not. It actually might go the other way because by July 18th of 2002 there had already been concerns about accounting issues at AOL in early -- in late June and early July. So to some extent the Washington Post article was

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fairly -- the response was muted by that fact.

If there was knowledge that AOL was more intimately implicated in the Purchase Pro issues and that itself -- it, itself, was under investigation as a result of that, that I may have had even a greater impact at that time.

Q. Did you test for that?

A. How do you test for something that didn't happen? You can only draw inferences from equivalent disclosures. So obviously not. I mean, sometimes you have to apply deductive reasoning and use equivalent disclosures to draw inferences.

Q. And did you do that? Did you look for equivalent disclosures here?

A. Yes.

Q. And is this the only equivalent disclosure you looked at for this e-mail?

A. No.

Q. What was the other equivalent disclosure you looked at?

A. July 19th, July 24th. I also looked after the class period at the

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disclosure, the Justice Department investigation in I think July 30th or 31st of 2002. But those were the only times I found anything that resembled the content of what's in this e-mail. So that was the best evidence I had.

Q. Have you ever seen a disclosure in an analyst report like this -- like what's in the e-mail from Lorenzo to Kiggen that there's an investigation, doesn't say which division, doesn't say who's investigating, doesn't say anything like that; some employee suspended, no number, doesn't say what group, accounting activity, no specifics about that. I mean, anything like this kind of unspecific rumor.

MR. HALL: Objection.

Q. Have you ever seen an analyst report with anything like that?

A. Yes, I have --

Q. Can you think of an example?

A. -- but beyond that that assumes that what's in this e-mail was the sum and substance of what was known. I'm sure if Kiggen had asked more questions or if Lorenzo

S. HAKALA

had elaborated on the phone I'm sure they would have known a lot more.

Q. Why do you say that?

A. Because of the specificity of this, that it related to Purchase Pro, you know, what division were they -- I mean, if you know the employees were laid off, you'd obviously know then which division they were laid off in.

Q. And does looking at the Lorenzo transcript or the Bernard transcript, does that suggest to you that there was more information to be known?

MR. HALL: Objection.

A. I don't know.

Q. Okay.

A. I don't know what they did and I don't know how a jury will interpret what the testimony is about that.

Q. Do you know Mr. Lorenzo and Mr. Bernard both indicated they don't remember anything about that?

MR. HALL: Objection.

A. That doesn't surprise me.

S. HAKALA

Q. Why not?

A. There seems to be a loss of memory in securities litigation depositions of fact witnesses that -- I always am surprised when you watch on like the NFL channel how players can remember exact plays 20 years ago that happened when they were playing football games but when things like this come up and people are in depositions suddenly they can't remember anything.

Q. So Mr. Lorenzo and Ms. Bernard are committing perjury in your view?

MR. HALL: Objection.

A. I didn't say that. They may not remember or they might have been coached not to remember or they just made no effort to recollect what they thought. That doesn't mean that when they wrote this e-mail they didn't know.

Q. Well --

A. All that says is that they didn't know at the time of their deposition if assuming what you're representing is true.

And all I'm telling you is it's

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very frustrating for me to read depositions where people don't seem to remember things that ordinary people should and ought to remember. And whether that's perjury or what that means legally, I don't know. It doesn't seem to be very enforceable.

Q. So just so I understand you think that Ms. Bernard knew about non-public investigations going on at AOL even though she was a 25-year-old low-level employee and that that managed to stay secret for more than a year; is that what you're saying?

MR. HALL: Objection.

A. It's entirely plausible. And in fact I've been in that type situation.

Q. What situation --

A. In corporations.

Q. What situation is that?

A. Where corporations were under investigation or where employees were suspended for accounting improprieties and it never got out. It was never disclosed publicly.

Q. And that junior, very low-level

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employees knew about it?

MR. HALL: Objection.

A. Oh, sure. Everybody knew.

Q. In a company like AOL.

MR. HALL: Objection.

A. Sure. If it's in their division. If it's people they report to. People they know. Sure.

Q. When you did the testing for the overnight return, did you use the last price for AOL?

A. Should be the closing price.

Q. But that's not what I asked. Did you use the last price or did you --

A. I used the last price but it is the closing price.

Q. I'm not sure what you mean by that.

A. The last price is a closing price except under certain exceptional circumstances.

Q. And in this circumstance you used the --

A. Closing.

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Q. You used the closing price.

A. Yeah.

Q. Is that what your report indicates?

A. I'm not sure. I would use whatever price was the last price reported on a formal exchange. But I'm pretty sure in this particular case the last price was the closing price. I'm not sure it makes any difference anyway.

Q. You're not sure whether it makes any difference whether it's the last price or the closing price?

A. No.

Q. Was this an issue with Xcelera?

A. It was but for a different reason.

Q. What was the different reason?

A. Because Xcelera was traded on an odd exchange and actually we were surprised by that. That was an issue that could have been addressed fairly easily in Xcelera frankly. We did it both ways, closing price and last price.

Q. But that was one of the reasons

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why your testimony was struck in Xcelera; is that right?

MR. HALL: Objection.

A. That was a flaw or a concern of the court. I'm not sure by itself that would have been. But there -- I mean, that's kind of a complex ruling. But the use of last price versus closing price, people do both and it just -- the key there is making sure you've accounted for what information comes in when.

Q. Did you take a look at what the effect of the disclosure on June 19th was? Of 2001.

A. I don't know. I didn't -- did I specifically include it in my event study or not?

I have an event on that day.

Yeah, I did.

Q. And what was the return of AOL on that day?

A. Small negative.

Q. Is that statistically significant?

A. No.

Q. At the 90 percent level?

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A. No. And that's because AOL indicated that it was probing its relationship with the Purchase Pro but indicated that it had no implications for AOL.

Q. So -- sorry. Because of AOL's denial you think that it didn't have an effect on the stock price?

A. The probe was the relationship with Purchase Pro. Not that AOL itself was under investigation or done anything wrong.

Q. Does it say that?

A. Not in this news service but that was in other information and that's actually in the Hakala Exhibit 9.

Q. What title does Eric Keller have?

MR. HALL: Objection.

A. I don't know.

Q. It says here he was the senior vice president of business affairs.

A. Okay.

Q. So he was suspended.

A. Okay.

Q. So in what sense does AOL act other than through its employees?

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MR. HALL: Objection.

Q. I mean, an investigation of Eric Keller, isn't that an investigation of AOL?

MR. HALL: Objection.

A. For his role in accounting in AOL or for his role in assisting Purchase Pro?

Q. I'm not sure I understand the difference.

A. The difference is is AOL subject to itself an accounting action or is it merely AOL had an employee who was assisting Purchase Pro in order to gain business from Purchase Pro. That's a big difference from an investor standpoint.

Q. Can Eric Keller bind the company?

MR. HALL: Objection.

A. Possibly.

Q. Can liability for Eric Keller be liability for the company?

MR. HALL: Objection.

A. I don't know.

Q. So you place a lot of weight on the e-mail that it's AOL that's under investigation. That's the crux of the

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difference between this and the Purchase Pro report; is that correct?

MR. HALL: Objection.

A. That deals were being inappropriately booked, that inflated revenue in AOL, and AOL is under investigation, yes. Those are the two components of that.

Q. Where does it say that?

A. Some deals booked inappropriately inflated revenue.

Q. So does that say that it's at AOL?

MR. HALL: Objection.

A. Not specifically but that's the inference I would draw if AOL is under investigation. I mean, ultimately we know that is what the SEC went after them for.

Q. In connection with Purchase Pro.

MR. HALL: Objection.

A. Yes.

Q. So this is --

A. No, in connection with AOL. The AOL side of the transaction. Cooked AOL's books.

Q. But this investigation that is

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disclosed on the June 19th e-mail, that is the investigation that eventually disclosed -- that was eventually disclosed on June 18th -- in July of 2002; is that right?

MR. HALL: Objection.

A. No.

Q. This is separate?

A. You're talking about the July 11th or --

Q. The June 19th.

A. June 19th is not what's in the Wall Street Journal -- Washington Post.

Q. But it leads to the -- this investigation leads to what is disclosed in the Washington Post article; is that correct?

MR. HALL: Objection.

A. Not directly.

Q. These are totally separate Purchase Pro investigations?

A. No, they --

MR. HALL: Objection.

A. They are related and they're a logical chain but at the time you're talking about on June 19th, in the June 19th article

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there is no indication that AOL is involved in accounting improprieties in AOL. It is true that the investigation of Purchase Pro led to an investigation of AOL and ultimately identified that fraud.

What was not known by the public was that the SEC was already looking at the AOL's side of the transaction in 2001. That was not known until July of 2002.

Q. But you think Credit Suisse knew that.

MR. HALL: Objection.

A. That's what the e-mail suggests.

Q. The e-mail suggests?

A. AOL's under investigation.

Q. And that doesn't mean an internal investigation in your view.

MR. HALL: Objection.

A. If AOL is under investigation that wouldn't be an internal investigation. It would be AOL investigating some employees for their activities involved in Purchase Pro. I wouldn't read it that way.

Q. So you think -- you think Ms.

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Bernard knew that AOL was under investigation from some regulatory body; is that right?

MR. HALL: Objection. Objection.

A. I don't know what I think. All I'm --

Q. Clearly.

MR. HALL: Objection.

A. Again, you want to argue liability with a damages expert who's making a certain assumption and I think that's just inappropriate and I think you know it's inappropriate but --

Q. I think your assumptions are inappropriate and I just want to test them.

MR. HALL: Well, Avi, then you can argue that to a jury and --

THE WITNESS: Argue that with counsel, not with me.

MR. HALL: -- unfortunately for all of us no one in this room is the final finder of fact and you get to put forward your arguments. I mean, you're going around and around about this. It's very clear from his report and his

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testimony that he assumes -- what his assumptions are and how they would impact his damage analysis.

A. That being said, in terms of making sure the answer's clear, my reading of this e-mail suggests AOL was under investigation. AOL being under investigation is not by itself I would assume.

Q. Okay. The July 18th report, did you look to see whether that -- the Washington Post article, did you look to see whether that was a confounded?

A. It was confounded.

Q. Okay.

A. But it wasn't confounded overnight. It was confounded during the day.

In other words, it a was clean event overnight, but it was then confounded later in the day.

Q. Why was it a clean event overnight?

A. It was the only piece of news overnight. From close to open it was the only piece of news. The confounding information

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occurred later in the day during trading.

Q. Okay. And so what was the volume close to open? Do you know?

A. There is no volume close to open.

Q. So --

A. I mean, unless you got the intraday trading and I think I had that somewhere. And you had the overnight. But it wasn't long. It was that the market opened significantly down from the close for reasons of this article. I don't think there's any doubt of that.

Q. You don't think there's any doubt of that.

A. No. I don't think there's any doubt from reading the news articles that the drop overnight was due to this article.

Q. Did you look at the intraday trading to look at whether the trading volume reflected that? Whether there was a drop in the morning when this Washington Post article came out as opposed to after trading the night before?

A. This article didn't appear until

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like after midnight. So you wouldn't pick it up in the after-hours trading anyway. But, yes, I did.

Q. You looked for that.

A. I had previously. Not in this case but previously.

Q. And what did you find?

A. The reaction was from close to open. It wasn't --

Q. I'm talking about intraday. Did you track to see whether --

A. You're talking after hours, not intraday.

Q. Yeah, after hours.

A. I don't remember. But I do know that after-hours trading does not reflect a drop. I don't see an after-hours drop in the price.

Q. You checked for that?

A. At some point before this case, yes.

Q. And what did you find?

A. There was none.

Q. There was none what?

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A. No after-hour drop. This was an issue in summary judgement. There was a motion for summary judgement in AOL Time-Warner Securities Litigation. And in response to that we looked very carefully at the intraday trading and the after-hours trading of that stock. The stock dropped due to this article overnight. It dropped from close to open --

Q. Yeah, but when did it drop? In that time frame, when did it drop? Did you test to see whether it dropped at 8 in the morning, 6 in the morning, 4 in the morning? Did you do any analysis to determine whether, in fact, in the time between close and open the stock dropped?

A. It was in the morning. Other than --

Q. Did you test for that?

A. How can you test for something when there's no trading? If there's no trading you can't test for it. All you can know is that this is the only piece of news between close and open and there's at least

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five or six articles that say this caused the stock to drop and open lower. And then later in the day the stock rebounds when the company makes a statement and a bunch of analysts make statements.

Q. Did you look at overnight trading for any other days in the class period?

A. In July of 2002 I believe I did.

Q. For any other time frame?

A. Not that I know of. Other than in response to I think there was one day that Professor Stoltz made a comment on. I looked at that but that's the only other day I can remember.

Q. So the fact that Pittman was going to resign, that wasn't known until after the market opened?

MR. HALL: Objection.

A. Yes.

Q. You're sure about that?

MR. HALL: Objection.

A. I think Pittman's resignation came in sometime during the day.

Q. And because --

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A. I mean, I have to go back and verify that but I'm almost certain that that's the case. If that's the day. Was that the day Pittman's resignation leaked out? Was there a board meeting at some point?

Let me check.

(Document review.)

A. The news Pittman may resign came out during the day on the 18th after the open. His actual resignation doesn't occur until the 19th.

Q. And was the 19th a statistically significant day?

A. Overnight, yes. Over the day as a whole, no.

Q. Why did you use overnight?

A. Because that would be the impact of the Washington Post article unconfounded.

Q. So, again, you looked to see whether the article -- you looked to see whether the article on its own had an effect close to opening.

A. Yes.

Q. And so did you look at trading

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volume at the opening on both those days?

A. I might have.

Q. You don't remember if you did or you didn't? You might have?

A. There's no such thing as trading volume at the open. There's just trading volume during the day. The opening price is an indication price. And then trading begins. Now, there can be some premarket trading and indications depending on how the market works.

Q. Did you look at those?

A. I don't remember. I probably did but I don't remember.

Q. But you might not have.

A. Yeah. I -- I don't know. Most of that is only quoted by the specialists and usually that's difficult to obtain even in the TAQ data or what's called trade and quote data.

Q. Did you test -- in your efficiency testing did you test so see whether the AOL stock would have traded efficiently from close to opening?

A. Yeah.

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Q. You did?

A. Yeah.

Q. And?

A. It did.

Q. Where is that analysis?

A. I ran an overnight trading volume analysis.

Q. Is that part of your report?

A. It was part of the overnight regression, yeah.

Q. Overnight regression, where? In this --

A. Yeah, in this case.

Q. Okay. So when you say the AOL stock traded efficiently you include in that overnight trading for the class period as being efficient trading?

A. When you're talking about from close to open, yes. I'm not sure I made any conclusions about trading in the after hours necessarily. Although, that's generally not -- it means generally most of the after-hours trades are really trades that were agreed to during the day and are just being

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late reported. But the fact of the matter is that if the market's efficient the overnight trading should be fairly efficient as well.

Q. Should be.

A. Should be. And it was in this case.

Q. And you tested for that?

A. Yeah.

MR. GESSER: All right. Let's take a lunch break.

THE VIDEOGRAPHER: The time is 12:46. This is the end of tape number two. We're going off the record.

(Luncheon recess taken at 12:46 p.m.)

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A F T E R N O O N S E S S I O N

(Time noted: 1:29 p.m.)

THE VIDEOGRAPHER: This is the start of the tape labeled number three. The time is 1:29 and we're back on the record.

* * *

S C O T T D. H A K A L A, resumed and testified as follows:

BY MR. GESSER:

Q. Dr. Hakala, before we took a break for lunch we were talking about overnight returns and looking at close to opening price changes.

And I'd asked you if you had looked at any other overnight returns for any day in the class period other than July 18th and July 19th of 2002.

Do you remember that?

A. Yes.

Q. Okay. And what was your answer to that?

A. I had looked at overnight returns in general but if -- I think your question was

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with regard to after-hours trading. And I had not looked at after-hours trading on any other days.

Q. Okay. For overnight returns, did you look at any of the days in which you found a statistically significant increase in AOL share price that you attributed to a newspaper article?

A. I don't know.

Q. Okay. So let's take August 13th, for example. August 13th, 2001.

A. Okay.

Q. You, in your report, indicate that there's a statistically significant increase in AOL stock price for August 13th and 14th combined; is that right? Is that how you -- due to the disclosure of the layoffs?

A. Combined -- well, I think it's both individually and together on a close to close basis.

Q. Okay. And what was the news that reached the market that day on August 13th?

A. That layoffs are expected at AOL.

Q. What was the source of that?

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A. And AOL struggling to meet its financial targets.

Q. What was the source of that?

A. That was a Wall Street Journal article.

Q. Okay. That would have been released before the market was opened?

A. Yes.

Q. Okay. But you didn't look -- did you look to see the close to opening change to --

A. Yes.

Q. You did.

A. Yes.

Q. And was that statistically significant?

A. No, it was not.

Q. Okay. So why in this case for August 13th did you decide to look at close to close whereas for July 18th, 2002 you went close to open?

A. I thought that this was a rumor. And because it was a rumor and because it was discussion on the 13th --

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Q. What was the rumor?

A. The layoffs. That there was a considerable amount of debate and reaction during the day of trading as opposed to close to open.

Also, there had been some rumor that there was layoff speculation on August 10th. So --

Q. I'm not sure I understand. You're saying that there may not have been -- the information in the report may not have been fully digested by the market?

A. Because it was a rumor and because people were investigating the rumor on the 13th. So it's not until the 13th and then when the Washington Post confirms it on the 14th that you really see the impacts.

Q. I see. So in this particular case you needed two disclosures for it to be incorporated into the stock price? Two separate disclosures?

A. Because it was a rumor there were reports throughout the day, not just the Washington Post and Wall Street Journal, but

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other news sources. I think there was a Standard & Poor's downgrade during the day on the 13th. And then there was a CNN show.

Q. And so you think the significant information on the August 13th report was that there was a rumor about layoffs?

A. And also AOL struggling to meet its financial targets.

Q. Was there any factual information in that report?

A. Not that I know of. Beyond that. The more detailed report came out on the 14th.

Q. And what information was in the 14th that wasn't in the report on the 13th?

A. A thousand employees.

Q. And what did it say on the 13th? What did it say about that?

A. Just that it's expected to have layoffs.

Q. Did it say that it was hundreds of employees?

A. It might have.

Q. But you don't think that's specific enough?

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MR. HALL: Objection.

A. It's specific.

Q. But --

A. I'm not sure why from close to open the stock didn't react more. All I know is that I've got news reports from various press articles saying that during the day on trading as these rumors gained verification or further validity, the market began to react to them.

Q. And you view the quality of this information differently than the quality of the information in the July 2002 report from the Washington Post?

MR. HALL: Objection.

A. Yes.

Q. Why is that?

A. Much larger. More of an indication of a broad set of layoffs in the AOL unit due to weeks in on-line advertising as opposed to laying off 30 or 40 employees.

Q. No, I'm sorry. I'm comparing the August 13th disclosure in the Wall Street Journal to the July 2002 disclosure in the

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Washington Post in terms of how long it would take for the market to react. You described the August 13th report as being rumors which would have taken a while to react.

A. Right.

Q. And I'm saying that's different in quality than the --

A. At least that's the way the market interpreted it.

Q. That's how you -- that's how you account for the difference?

A. That's how I understood the difference, yes.

Q. In determining how plaintiffs -- how much of plaintiffs' losses are attributable to Credit Suisse, can you explain to me how you constructed the methodology that you used to come up with the number?

A. Basically what I wanted to do was come up with an idea of what an equivalent disclosure impact was by using relatively clean analyst reports both positive and negative that met certain criteria and to look at what their average impact was. What I

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found I think was that the average impact I think in actual log terms of an analyst report whether a positive or negative that met certain qualitative criteria and was either unconfounded or issued in connection with another analyst report which was neutral was about 2.7 percent in general on both the positive and negative and I think about 2.71 percent if it was just a negative report.

And so I tried to look at it in general of what effect on average would a report have that either reduced price target or substantially reduced EBITDA targets and commented on the reduction in the prospects for the company. And so the way that we often do it -- in the event study literature we often talk about this in the context of earnings response models or equivalent disclosure models. But to use various analyst reports to draw that inference.

I also looked at the impact of the February 5th announcement. Why that one out of one article caused the stock to go up as much as it did is not clear but clearly the

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impact I came up with is not inconsistent with the impact we see around September 19th with the significant analyst report that's positive. And what we see on February 5th of 2001.

So, in other words, it was confirmed both by things specific to CSFB in terms of its coverage of other media stocks when it downgraded -- in September Laura Martin downgraded some other media stocks as well as least two instances specific to CSFB related to AOL. And then a more general study as to how does the market react to both positive and negative analyst reports that meet a certain criteria.

Q. When you use the term "clean" and "relatively clean" you mean that the analyst report is the only news about AOL on that day?

A. The only news that we would have identified as potentially material. There's always news about AOL every single day. But it's the only news that our criteria would say would be potentially material.

Q. And what were the criteria you

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used?

A. Potentially material was based on Federal Register and a list of the types of events that are potentially material in Ryan and Taffler. It's a published paper in 2004. We're looking at, you know, significant news of merger and acquisition activity which there was very little. Changes or rumors of changes in earnings. Earnings expectations. Company announcements relating to that. Certain corporate developments that would be considered significant because they were commented on by analysts. And then we would not include analysts' reports if they were merely reiterations unless they're CSFB reports which we put in as a matter of course.

If they were significant upgrades or downgrades in either price targets, earnings, or some other qualitative nature, a recommendation of buy versus sell, then it would come into play.

Q. How reproducible do you think that analysis is? If someone else were to try to do the same analysis what do you think the

S. HAKALA

variability would be?

A. Typically the variability changes depending on what point you look at reproducibility. If you're looking at reproducibility based on the entire database and source of information reviewed. What we typically find is if two different people are looking at the same information they're going to agree about 95 percent of the time on average.

Q. You've tested this?

A. Yeah. Yeah. We do what we call double blinds where we have two different people go through the same information and see what they come up.

Q. Who's we?

A. My firm.

Q. Okay.

A. My office.

Additionally, if both people are looking at all of the same information that had been previously identified and then we're looking at is this an event or is this not an event, typically the rate of error is fairly

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small. It's usually a couple percent to 5 percent at most.

As a backup in this case as in most cases I went and did my own thorough very detailed review of LexisNexis after my guys had already done all their work and I ended up changing only about 2 to 3 percent of the events.

Q. Okay. But there were events that changed between your class certification report and your summary judgment report; is that right?

A. You mean my expert report for damages?

Q. Yeah.

A. Yes. That's because I did a much more extensive event search at this stage because at this stage I wanted to find all the analyst reports, not just some. So, yeah, we went to a greater number of databases so we added more events. And I think we may have altered a few events but most of the changes should be adding an event where we found out that there was an analyst on a given day who

S. HAKALA

made a statement that fit within our criteria that we had not known about at the class cert stage.

So typically what I would say is it's kind of like layers. It's more likely that you will omit an event that you'd like to consider at some point than that you'll make a mistake as including an event that you shouldn't have included. And as you go through greater and greater databases and as you have more hands working the study, the number of events will go up and your risk of an omission or significant omission will go down.

Q. Okay. So you're saying that at least in selecting events to consider the error rate is about 5 percent, is that what you said?

A. Five to 10 percent depending on the type of company and the circumstance, yeah. And given a certain database. The error rate can be higher on omissions but omissions do not tend to affect the reliability of the result very much.

S. HAKALA

Q. And --

A. In fact, the omission rate -- in other words, you could miss half of the events and the event study will still be superior to the alternatives of a simple cumulative abnormal no return study or what I call an incomplete intervention analysis which is what Professor Stoltz did.

Q. Were the differences between the events in your study for In Re. AOL versus your events in this case were?

A. It was larger because in In Re. AOL we were not focused on analyst reports and the issue of influence of analysts. So we tended not to put in events associated with the analyst reports as much.

Q. But isn't an event an event? I mean, why should that matter?

A. It's more of an issue of how thorough we searched the sources. It's more an issue of omission than commission. So what happens is the original AOL report was done for summary judgment and was preliminary in nature. We say that. We had certain data.

S. HAKALA

Then when we went to the class cert in this case we did a little bit more additional searching and so we added some additional events we might have missed. And then in the final report we found some additional analysts reports because we went to additional data sources that I did not have in 2004.

Some of the information, some of the sources of data that I have now I did not have access to in 2004.

So I had some omissions in terms of I was missing some events in the original summary judgment response event study in AOL Time-Warner Securities Litigation. I filled in many of those in the class cert in this case.

Q. So a clean day is a day in which there is no other information that you view as being material other than the analyst report.

A. Potentially material.

Q. Potentially.

A. Or if there is other information the information was deemed to not be significant. To be most likely neutral.

S. HAKALA

Q. Okay. But that's also a judgment call.

A. That's always a judgment call, yeah.

Q. And that adds another layer of error; is that right?

A. It can. Although if you look at the event study literature that deals with confounding events, generally when they're doing multiple company event studies they include any instance where in the judgment of the researcher the event of interest is at least half or more than half of effect on that day.

In other words, if there's two pieces of information on that day but the researcher concludes the other piece is insignificant or not likely to be important they'll still include that as an event.

Q. Where is that?

A. I'd have to go back and look but I did a research on what the event study literature says on confounding events and I was surprised how little there is in the

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academic literature. Most of the academic literature does not really deal with the problem of confounding events other than figuring out -- believing that by looking across a large sample of companies the confounding issue can sort of average out.

And here the way we're averaging out is by having a large number of analyst reports and analyst related events and trying to isolate days when analyst reports are the dominant piece of information. Very similar to way the academic literature is doing it.

Q. So how many days did you determine were either clean or relatively clean analyst days?

A. I think about 40-something. Forty-seven.

Q. And how do those relate to the inflationary or deflationary days?

A. They give us a measure of the equivalent effect or the equivalent disclosure effect of certain type of analyst changes. Significant upgrades, downgrades, changes in price targets, changes in earnings targets,

S. HAKALA

and what effect on average those would have.

Q. Okay. So you have inflationary and deflationary days.

A. Yes.

Q. Those are different than the analyst days, right?

A. Yes. Because some of the inflationary and deflationary days relate to the company as opposed to analysts.

Q. Okay. So tell me what are -- how did you determine what are inflationary or deflationary days?

A. Is the statement a positive statement that I would have expected a priori to cause the stock price to go up and does it in fact go up. That's inflationary. If it's a positive statement that relates to the -- we're talking about the advertising issue here by the way.

Q. Okay.

A. Because the layoff issue is different.

Is it a negative statement about advertising, advertising trends, and earnings

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that causes the price to go down or we expect the price to go down and in fact it goes down.

I think there's a total of 45 days I considered of which 23 were considered negatives. Of the analyst days.

Q. Okay.

A. And then there's a broader set of days that relate to advertising in general. Because that includes company earnings announcements.

Q. And this notion of relatively clean days, is that something that you found in the finance literature or is that just a term of art you used?

A. No, no. That is in the finance literature. When they talked about the confounding, generally it's a knowledge that there can be confounding events on all days if you really look for it. But the real issue is is the confounding information so significant that it affects your estimate enough to be worried about.

So when I say relatively clean, for example, a day when there's a negative

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analyst reply but there's also a neutral analyst report that's a mere reiteration I would view that as a relatively clean day because I would view the reiteration as not having an impact or much of an impact and I would view the negative report as being the dominant impact on that day.

Q. And is there any support in the academic literature for that; for being able to take analyst reports and determine that one of them is neutral and, therefore, it's not confounding for the purposes of assessing impact?

A. Yes. I've seen that in some studies.

Q. Can you tell me which studies?

A. No. I think some of the work that Shipper did, Laurentius Marais has done some work with Catherine. I have to go back and look at the other analysts' reports. A number of the that studies we cite actually here do something like that.

Q. They do?

A. They look at buy/sells and

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negative versus positive reports.

Q. And say that it's okay to ignore confounding analyst reports if they're neutral?

A. Some of them don't say it but if you actually look at the underlying data they do it. In other words, they only include days when there are positive or negative reports but if you actually look you'll see there's more analyst reports on some of those days. But they're neutral.

And in fact some of the studies don't even control for confounding information unless it's like a company's earnings announcement.

Q. But those studies have been criticized for that.

A. No, no. A lot of them have not. In fact, there's a surprising amount of literature they don't even make an effort to control for confounding information.

Q. Even when they're looking at a particular date as opposed to an aggregate?

A. There's very little of that. In

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fact, single company event studies where a single day of interest is considered, is an applied exercise which does not appear generally in the academic literature. So there's very little in the academic literature on that.

In fact, I think there's a discussion in -- of text by Gilson and Black that talk about that and say that in those circumstances one must simply use some kind of analytical approach or deductive reasoning to draw inferences.

So there is literature on it. There's not a lot of literature on it and the academic literature has tended to sweep the issue under the rug and ignore it.

Q. And is there some objective way to determine whether an analyst report is neutral?

A. Well, if the report says it's a reiteration or if there's no either price target or buy or sell. That would be pretty obvious. Pretty objective.

Q. So that would be a neutral report.

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A. Yeah. Yeah. So our criteria is is there a material change in an earnings expectation. Is there a material statement buy/sell kind of change in rating. Or is there a significant material change in price target.

Now, there's one exception. If it's an analyst report that's written like a day after five other analysts have taken the same action we would probably not include it because we'd consider it old news. In other words, the analyst is just following what other analysts have said.

Q. Even if that analyst in particular hasn't said it before.

A. Yeah. Now, in general, we would -- we didn't do that here as you'll notice. But in general in most event studies I would generally not include those analyst reports if they're what I call follow-on or me-too reports.

But in general here we were pretty careful -- or I tried to be as careful as I could in including any analyst report where

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there was any material change in price target, buy or sell rating, or earnings forecast.

Q. Okay. So if all that stayed the same you wouldn't expect it to have any impact on the stock price?

A. No. There may still be impact because sometimes the nuances of what's said in the narrative, the qualitative statements.

Q. And you looked through all the reports and looked at all the qualitative analysis.

A. No.

Q. You didn't do that.

A. No. I couldn't. So to the extent that there may have been some reports that made some qualitative statements but didn't change targets, unless there was a news article about it I didn't include it.

Q. Because you wouldn't expect that to have an impact on the stock price?

A. I wouldn't know for sure. There was no way for me to do that.

Q. Why wasn't there any way for you to do it?

S. HAKALA

A. That's not as objective.

Now, on the other hand you'll see there's some news articles where, like, Blodget or somebody says AOL's a really good stock, you should buy it. I put that in.

If Becker of Lehman says -- makes a comment, and she says something good or bad, then I put that again.

But generally if it's just a qualitative type of statement without price target or earnings, generally I did not put that in unless there was an associated news article that highlighted that qualitative statement.

So it had to be something more to it.

MR. GESSER: We're up to Hakala 10.

(Hakala Exhibit 10, MediaWeek article entitled AOL/Time-Warner - One of One?...Plus Commentary on the Past Week's Market News and Performance, marked for identification as of this date.)

BY MR. GESSER:

Q. Earlier you said that there was an analyst report from Credit Suisse on February 5th that you thought had a significant impact on AOL stock price; is that right.

A. Yes.

Q. Is that the report?

A. Yes.

Q. Does this report change AOL -- Credit Suisse's rating or price target or any of the factors we were just discussing that would lead you to believe that it was likely to have an effect on stock price?

A. No. No, and, in fact, when I first put it in I actually expected it to have only a small positive effect at most.

Q. So in your analysis that we're talking about for the disclosures you would have treated this -- but for the fact that it happened to be from Credit Suisse you would have treated this as a neutral report?

A. Generally, yes.

Q. Okay.

A. Generally, yes. I wouldn't have put it in the event study because I wouldn't have known how to interpret it. Once you read the report - and I was focused on the Credit Suisse - that would alter the interpretation.

Q. So this demonstrates that your methodology may have some problems in the sense that there are reports in your view that would be neutral and yet could have a fairly significant impact on stock price?

MR. HALL: Objection.

A. That's true. There's no such thing as a perfect event study. And I think the allusion that there is is an allusion.

But this is a little different. When we're talking about the reports of interest in this case we're going to be far more liberal in including them in the event study than we would if they were third-party analyst reports.

Q. But I mean whether the reports have an impact on the stock price, that's -- whether they're from Credit Suisse or someone else an effect is an effect; is that right?

A. That's correct.

Q. And what about this report makes you think it would have -- other than looking simply at the stock return what about this report made you think it had a positive impact on the stock price?

A. Well, there's a number of things. They're really commenting on the news of the prior week and they're saying that they think that the market has become overly skeptical about AOL and it's overly concerned and their analysts say Jamie and Lauren believe that it's underowned and that there's going to be this upside to the stock.

And I think in -- I think in context of that, that is what the market sort of refocusing on. It's kind of a report out of the blue after there'd been some negative reaction to news in January.

And it seemed to me that the market was now saying, Okay, where is this going to go and this is now a report from CSFB which is a concept report which suggests that we think that this is a stock that's going to

do better than its peers.

Q. Okay. This report is authored by Dennis Leibowitz; is that right?

A. Yes. And Regan and Pappas.

Q. Okay. Is there any allegation of which you're aware that Mr. Leibowitz or Mr. Regan or Mr. Pappas didn't believe anything they were saying in these reports?

MR. HALL: Objection.

A. No.

Q. Okay.

A. Not that I know of.

Q. Do you know of any news stories that picked up on this report and commented on it as being significant?

MR. HALL: Objection.

A. I don't remember. I thought there was something I found but I don't know for sure.

Q. And if you look at page 2 of this report, if you look at the fourth paragraph, it talks about doubts about the credibility of AOL's targets being raised. And it says, "There were also some suspicions of accounting

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maneuvers and concerns over the lack of information on topics like AOL's submission of advertising."

A. Yes.

Q. And then it says, "The first quarter reflects what is expected to be the slowest in one of the advertising -- the slowest one in the advertising industry particularly for the Turner networks and some of the merger savings are not yet in full force."

And you would characterize that as being somewhat negative; is that correct?

A. No.

Q. No?

A. Not for this report. I would suggest that this is reflecting why the stock was reacting negative the prior week. So this is more of a retrospective analysis of why AOL Time-Warner stock has lagged at the end of January. So if you look at my event study, it's not the report itself that's negative. What the report is saying is here are the concerns in the market that have led the stock

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price to languish recently and the languishing of the stock price really occurred on January 31st and February 1st. So this is a report in response to that.

Q. Okay.

A. Not -- the report's not saying we're concerned about these things. We're saying this is the market's concern already.

Q. Well, it says the first quarter reflects what is expected to be the slowest one in the advertising industry, particularly for the Turner networks.

A. Yes.

Q. The Turner networks is part of AOL?

A. Yes.

Q. So that's not -- that's an objective statement, is it not?

A. Yes. But not new in this report. That's a statement of concern relating to the drop in the stock price on July 31st and February 1st.

Q. January 31st.

A. January 31st and February 1st,

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right.

Q. And -- but this discloses a concern about advertising revenue for the Time-Warner division; is that right?

A. That was in the market, yes.

Q. But you nonetheless view this as a positive report because you think that these concerns are swept aside by the report; is that right?

A. This report says that we think that the market is overdiscounted those factors and Jamie Kiggen and Laura Martin are saying we think that you should, you know -- you should buy this because the institutions aren't in this stock as much as they should be and we think the company's going to do better than people think.

Q. It says that these issues are going to cause the stock to tread water for a while; is that right?

A. Right.

Q. Okay. And did you think that the -- is it your assumption that the concentration of institutional ownership was

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something that was new in this report?

A. No.

Q. That was already out in the market.

A. Yeah.

Q. Okay. So then why would that have an effect on the stock price?

A. Because that's not really what's going on here. What's going on here is they're saying the market's reacting to these concerns. We think the market is giving too much weight to these concerns. We think AOL's going to do better.

Q. But how is that different from what all the -- I mean, there are other analysts who have much higher priced targets, much higher estimates, and -- at this time why is the market reacting to what Credit Suisse is saying?

A. Because Credit Suisse is speaking now after the stock has had a shakeout of two days of negative reports and saying we think the market's -- my take of this report is they're saying the market's overreacting and

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that AOL has a track record of credibility so that the market is overdiscounting this stock and we expect this stock to return in the future. And that's what investors of taking out of this and that's why they're reacting to it.

Now, I was actually surprised at the reaction but clearly it's a significant reaction and there's clearly nothing else I found that would explain it other than this.

So sometimes a report that might not change anything but is reacting after a negative event such as occurred on February 1st, even reiterating a report that's following a negative development can sometimes have a positive effect. And that's an example of what's happening here.

Q. So what happened on February 1st?

A. It's in our events study.

(Document review.)

A. February 1st was -- the tag line from Reuters is investors are skeptical about growth prospects and are now thinking that numbers released the day before were worse

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than what they originally thought.

And then there's another article the following day saying that AOL is hard-pressed to meet its fiscal year targets.

Q. And so that's -- February 1st. So what -- is that a advertising day in your --

A. Yes.

Q. So -- and what does that mean? That means that this was a partial correction of Credit Suisse's omission earlier in the month; is that right?

A. Yes.

Q. And then you take the position that on February 5th then there was a reinflation; is that correct?

A. Yes. Yes.

Q. Okay. Does it -- does your -- and do you view February 1st as a relatively clean day?

A. It's relatively clean for the news on that day. However, there is a positive CSFB report on that day but it doesn't seem to stem the tide. The day is dominated by investor and other analyst reaction. So in

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effect February 1st is relatively clean in terms of what's causing the market to move on that day. But it is confounded in the sense that Credit Suisse report probably kept that drop from being greater as well as some other reports.

Q. As well as some other reports.

A. Yeah.

Q. Do you remember who else released reports that day?

A. No, I don't.

Q. Okay. Is it possible that Bear Stearns, Bernstein, Deutsche Bank, Goldman Sachs, Salomon Smith Barney, UBS Warburg all released reports on that day?

A. I'm not surprised at all. It was an analyst day so I would expect all the major analysts that were regularly covering the stock to have issued reports in that time period.

Q. So how do you separate out Credit Suisse's report from all those other reports?

A. I don't. On that day I don't give weight to Credit Suisse any more than any of

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the other reports.

Q. But you just divide them up among the analysts? Or how do you do it?

A. No, no, no, no. That day is an advertising day. That day is a day that's corrective. It reduces damages going forward.

Q. And so the stock price drops on that day?

A. Drops on that day because the market is partially realizing the relevant truth before we can have loss causation because I don't start loss causation. So by having that day in I'm actually neutralizing some of the inflation in the stock price.

Q. And have you read the Bear Stearns, the Bernstein, the Goldman Sachs, the Salomon Smith Barney, and the UBS reports to see if they had other concerns about AOL that may have been contributing to the drop in the stock price?

A. Yes. Not all of them but most of the ones that you mentioned I'm pretty sure I've read. And I think most of them all have concerns that relate to this issue if they

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have concerns at all. The reports are really mixed. Some reports are the market's overreacting to concerns which is sort of the CSFB tone and other reports are these are legitimate concerns so we're lowering our EBITDA targets or our EBITDA targets are going to be below management guidance. So there's sort of two sets of reports in my mind with some gradation in between.

Q. And you feel that you can sift through all this and determine the effect of the disclosure?

A. Well, all we're doing is we're not trying to determine the effect of a single disclosure. We're saying there's a whole series of relevant statements on that day but since they're all relevant we're taking the net effect of the stock price movement on that day and we're considering it to be related to the advertising related claims in this case so I don't have to parse it out because all of the events, all of the statements relate primarily to the issue in the case.

Q. But you didn't read all those

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reports to determine that?

A. I can't say for certain I read all of them but I certainly read a lot of them. And I certainly read summaries of most of them.

Q. So is that amount that is attributable to the disclosure, is that quantifiable or are you just take whatever the stock drop was that day and you attribute all of that to the disclosure of -- of what?

A. Once I'm convinced that the statement on that day and the movement in the stock price on that day relate to the issue in the case and not something else then I take the net movement on that day.

Q. And the net --

A. The fact that there are multiple statements on that day doesn't change that result.

Q. So how can you determine as between all that information what's relevant?

A. Well, all of it's relevant. That's the problem is all of it's relevant so --

S. HAKALA

Q. Well, cumulatively it's relevant but any particular piece of it, you can't determine whether any particular piece of it is relevant.

A. Well, why not? If you're talking about what is -- what is the punch line of what investors are react to go on that day it's relevant information.

Q. And what is that?

A. The relevant information is whether or not advertising demand is going to be -- and pricing is going to be sufficient to allow AOL to meet its revenue and earnings targets.

Q. And when they talk about advertising is that on-line or is that --

A. Both.

Q. It's both?

A. It's both.

Q. And where do you get that from?

A. From the news articles and the analysts' reports.

Q. Which news articles?

A. I cite one in specific.

S. HAKALA

Q. Okay. Which one is that?

A. Reuters.

Q. What does it say?

A. Growth prospects are now thinking the numbers released the day before were worse than when they originally thought.

But the issue was advertising and advertising rates and growth.

Q. So just so I understand, is there any peer review method that would allow you to determine that the stock was responding to the Reuters article as opposed to something else?

A. No. The Reuters article was not what the market was responding to. The Reuters article is a summary of what the market was responding to. It's the other way around.

Q. Okay. So what was the market responding to?

A. It was responding to these concerns and these concerns were expressed by a number of different analysts and a number of different investors. And the Reuters article is just a convenient way of summarizing what

S. HAKALA

the market was responding to. And the peer reviewed way of doing that is to look at the news and ask what are the analyst reports saying about why the stock reacted negatively.

And, in fact, if we look at Hakala Exhibit 10 we see exactly it says, "This is what the market is skeptical about. Here's the concerns in the market."

And my point is that the February 5th report by Credit Suisse First Boston says that the concerns that the market's reacting to at the end of January and early February relate to the allegations in this complaint.

Q. And earlier you said that the effect of a number of analysts speaking would be different than the effect of one analyst speaking; is that right?

A. Sometimes. Sometimes not.

Q. Okay. In this particular case you're tagging CSFB with all the liability for a decline in AOL stock price that occurs on a day when there are a number of analyst reports; is that right?

A. No. No, I'm not.

S. HAKALA

Q. No? What are you doing?

A. I'm only tagging them with a fraction of that and I'm considering that to be an event which releases inflation from the share price so it reduces damages in this case. It doesn't increase them.

Q. This isn't a relative disclosure day?

A. It is relative disclosure but because it represents the materiality of the concerns, it reduces some of the inflation in the stock price before you could have damages. So it doesn't increase damages. It decreases damages by including that day in the event study. Including that day in the event study and putting a partial weight on that date which is determined mathematically in Exhibit C-1A and C-1 causes that event to reduce damages. Not increase damages.

Q. But that's not an equivalent disclosure date for you?

A. It is an equivalent disclosure date. It does give us information that the issues in this complaint are material but

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because it's causing the stock to go down for reasons related to the fraud before I argued the first major corrective disclosure, I don't assume there's any loss causation associated with the drop on that date so I don't have any damages on that day.

Q. When's the first major disclosure date?

A. The first major disclosure that really sort of reveals the relevant truth in my mind is really the July 18th date.

Q. Okay. We'll get to that in a second.

A. So there's positive and negative events as the mix of information's changing and going back and forth in this time period. And I want to pick up both positive and negative days and give some weight to them. But it's a fractional weight that reflects CSFB's role, not a full weight. I'm not putting a hundred percent weight on that.

Q. So what weight are you putting on that?

A. It's about .1341.

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Q. Of what?

A. Of the full effect. So about 13.4 percent of the full --

Q. And how do you arrive at that number?

A. It's calculated based on the event effect of CSFB's analyst reports throughout the period.

Q. Cumulatively?

A. Cumulatively.

Q. So it's a rough --

A. It's solved. It's solved for. It's called a calibration. Which is something in the peer review literature, by the way.

So that's an exact calculation of what portion of all those relative events should be attributable to CSFB by itself.

Q. When you take -- well, let's go to July 18th.

A. Okay.

Q. And that's a negative ad related disclosure date for you?

A. Yes.

Q. And that's the first date for

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which you start assessing damages; is that right?

A. Yes.

Q. And what was the cause of the corrective disclosure?

A. Missed analyst estimates because of declines in ad revenues both in AOL and in Time-Warner. And a lowering of guidance accordingly.

Q. And why wouldn't that be a full corrective disclosure of the alleged fraud?

A. Because I'm assuming that CSFB's only on the hook for part of it. And, by the way, it was almost a full corrective disclosure. If you look at the inflation percentage, the inflation in the share price is very close to zero after those two days. And then there's reinflation in August and September.

So in fact it is -- one could argue -- I mean, there is an argument to be made in an alternative that you would take the analyst reports at the beginning of the class period and carry them out to that date. And

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you could do that. That would be something one could do and that would be an alternative to present to the jury. But what I'm looking at is, you know, how much of the drop is occurring prior to and then subsequent to that date.

Q. And you attribute all of the drop in AOL stock price to decline in advertising revenue?

A. Yes. I believe that is the primary if not exclusive cause of the effect on those two days.

Q. Does your event study indicate that there's any other negative news about AOL that occurs on those two days?

A. There is some other news but I don't think it's net negative.

Q. What is that news?

A. Well, there's other news about subscriber revenue, subscriber rates in AOL. Not much more.

Q. Anything about Warner Music's revenues?

A. There certainly is information

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about each division but Warner Music is one of the issues that Laura Martin expresses a concern about.

Q. About advertising.

A. In general.

Q. Well, does she express a view about the music sale business and how it might be affected by on-line pirate downloads?

A. I don't know but I don't remember that being a particularly noticeable component of the drop on that day. If you know it was that would be interesting.

Q. Well, I don't know what it was. I mean, I don't know how -- how do we determine that? If there's negative news about Warner Music Group's revenues, how do we decide what was attributable to what?

A. You'd have to look at the disclosure about Warner and whether or not that was part of what she foresaw. She did foresee problems in the Warner division.

Q. No, I'm not talking about what she foresaw. I'm talking about if you look on any particular day how do you determine if there's

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negative news in a whole bunch of areas, how do you determine what is a cause in a drop in the stock?

A. Reading all the analyst reports and news reports and drawing inferences from those information and deductive reasons.

Q. Okay. So let's take a look at Hakala 11.

A. Okay.

(Hakala Exhibit 11, Business Wire press release dated July 18, 2001, marked for identification as of this date.)

BY MR. GESSER:

Q. So this is -- have you seen this article before?

A. Yes.

Q. What is this?

A. This is the press release where the company is disclosing its second quarter earnings.

Q. Okay. So if you look at page 6.

A. Yes.

Q. In the music section it says that

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Warner Music Group's quarterly revenues totaled 895 million, down 11 percent from the previous year due primarily to lower industry wide music scales and unfavorable currency exchange.

A. Yes.

Q. EBITDA declined 33 percent. Okay? Would you agree that's negative news?

A. All else being equal, yes. But relative to what was previously expected, no.

Q. That decline is expected?

A. In other words, if you already knew that the Music Group was struggling and the music was being pirated and that you were having problems with the marketing costs and artists that would already be baked into your forecasts.

Q. Do you know what the expectations were for the Music Group at this time?

A. It was struggling and it was known to be declining.

Q. Do you know what the expectations were for revenue?

A. I don't know if it was this much

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but I do know that it was having troubles. And I know that it was having troubles in the first quarter as well. See, this is down from the previous year's quarter. So they'd already been down in the first quarter that year.

Q. You know that?

A. Yeah.

Q. How much?

A. Don't know. We'd have to look at that first quarter. We'd have to look at the guidance. But I know that the Warner Music Group was struggling all throughout this period and I think Laura Martin somewhere made a comment of that. She may even have commented on that before the merger.

Q. So --

A. The other thing is, you know --

Q. So you're able to read these reports, take a look at the negative news, and determine which piece of this information is likely to be the cause of a stock drop and which is not.

MR. HALL: Objection.

S. HAKALA

A. It's not just me. It's what are the analysts saying and it's also, okay, subscriptions are up in AOL. So if we have a little bit of poor performance in one division but good performance in another the question is that net of the issue that we're concerned about was the net effect of all the other issues positive or negative or relatively neutral. And my determination was that it was relatively neutral. To slight negative. But certainly not -- nothing even remotely necessary to cause the kind of price declines we're talking about.

Q. And what are the price declines we're talking about?

A. We're talking about a relative stock price effect on two days. The first day 8.18 percent and then on the second day when the analysts say that this is really bad for ad revenue and CSFB, by the way, lowers second half revenue and visibility another 4.88 percent.

Q. So that's July 18th and July --

A. July 19th, yes. So you're looking

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at more than a 12 percent drop over two days.

Q. And then what did you do -- how do you attribute that drop to the damages in this case caused by CSFB?

A. I only attribute a fraction of it to CSFB because CSFB is only issuing a partial report on one day and the disclosures made by the company so I assume that company disclosures carry far more weight than CSFB so I only assigned 13.4 percent of the effect of those drops to CSFB.

Q. And how do you come up with the 13.4 percent?

A. Again, calibration. I did an EBITDA target at the beginning of the class period and not issued the February 5th report, and then working forward --

Q. How do you come up with that number?

A. Based on the equivalent disclosure analyst impact analysis we previously discussed.

Q. And what is that?

A. We've already discussed that. I